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REMARKS

In the Office Action, the Examiner noted that claims 1-23 are pending in the application and that claims 1-23 stand rejected. The Examiner further noted that claim 2 is objected to. By this response claims 1-2 and 12-16 have been amended to more clearly define the Applicants' invention and to correct for informalities and confusion pointed out by the Examiner and not in response to prior art. All other claims continue unamended.

In view of the following discussion, the Applicants respectfully submit that none of the claims now pending in the application are anticipated under the provisions of 35 U.S.C. § 102 or obvious under the provisions of 35 U.S.C. § 103. Furthermore, the Applicants also submit that all of these claims now fully satisfy the requirements of 35 U.S.C. § 112. Thus, the Applicants believe that all of these claims are now in allowable form.

Objections

A. Claim 2

The Examiner has objected to claim 2 noting that it is not understood whether it is the first path or the second path that has facilities having bandwidth utilization levels below a first threshold.

In response, the Applicants have amended claim 2 to make it clear that in a Bi-directional Line Switched Ring (BLSR), if facilities having bandwidth utilization levels below a first threshold level in the first circuit path can not be found, a second circuit path in an opposing direction to the first circuit path is selected.

Having made this change, the Applicants respectfully submit that the basis for the Examiner's objection to claim 2 has been removed. As such, the Applicants respectfully request that the Examiner's objection to claim 2 be withdrawn.

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Rejections

**A. 35 U.S.C. § 112**

The Examiner rejected claims 1-23 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner alleges that the claim(s) contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

More specifically, the Examiner alleges that the term facilities has not been defined in the specification. The Examiner further alleges that facilities is a general term and makes the claims unclear as related to the invention. The rejection is respectfully traversed.

The Applicants would like to point out to the Examiner that it has long been held that an Applicant can be his own lexicographer provided the Applicants' definition, to the extent it differs from the conventional definition, is clearly set forth in the Specification. The Applicants, in the specification, clearly define "facilities" as the communication paths (channels) of a subject link (circuit path). In support of the definition of "facilities", the Applicants in the Specification specifically recite:

"The method 300 of FIG. 3 is entered at step 302 and proceeds to step 304, where a threshold level is selected. Each facility in a link has a user defined threshold. For example, the link connecting first ADM 142 to second ADM 144 can comprise a plurality of facilities. One such facility can be labeled facility "E1", while another can be labeled "E2" and so on. Link E can, illustratively, be an OC3 and the threshold can be set, for example, at one, two or three DS-3s." (See Specification, page 9, lines 15-22).

In support of the term "facilities" the Applicants further recite:

"An example of threshold level adjustment (per step 304) will now be discussed. Assume that an OC-3 link is configured as three DS-3s or as a Synchronous Transport Signal Level One (STS-1) facility. That is

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each DS-3/STS-1 is configured for a threshold level, i.e. 50%. Specifically, each DS-3/STS-1 has a threshold of 14 DS-1s. Once the threshold is exceeded for the first DS-3/STS-1, a check is made to determine whether the other facilities within the link are below the threshold value. That is the second DS-3/STS-1 is checked to determine if its bandwidth utilization level is below 14 DS-1s. If the bandwidth of the second DS-3/STS-1 is below the threshold value, the second DS-3/STS-1 facility will be selected for the path. If the second facility is not below the threshold level, the search continues either for an alternate facility or an alternate path.

It should be noted by those skilled in the art that a facility can equate to a link where the threshold level is 100%. For example, if an OC-3 is configured as 84 DS-1s with a threshold level of a 100%, there is no facility balancing. The threshold value will determine whether a link should be equated as a facility.

In each of these examples, it is noted that the "granularity" of the threshold level is determined with respect to the type, for example OC-3, OC-48, OC-192 and such, of link used and the configuration of that link. There are a number of conventional ways to configure a link. Thus, in determining threshold levels to be used in comparing loading levels at step 314, it is important to understand the type of links offered by the network and the configuration of those links into facilities." (See Specification, page 11, line 29 through page 12, line 23).

It is clearly evident from at least the portions of the Applicants' Specification depicted above that the Applicants have not only clearly and specifically defined the meaning of the term "facilities" but the Applicants have also provided several examples of the facilities of a link. In one specific example the Applicants recite that in an OC-3 link configured as three DS-3s (i.e., having three facilities) or as a Synchronous Transport Signal Level One (STS-1) facility, each DS-3/STS-1 is configured for a threshold level, i.e. 50% and specifically, each DS-3/STS-1 has a threshold of 14 DS-1s. The Applicants respectfully submit that the Specification most clearly defines the Applicants' meaning of the term "facilities" and even further provides several examples of "facilities". Even further, the Applicants have specifically recited that there are a number of conventional ways to configure a link and, as such, in determining threshold levels to be used in comparing loading levels in accordance with the Applicants' invention, it is important to understand the type of links offered by the network

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and the configuration of those links into facilities (e.g., DS-3s or Synchronous Transport Signal Level One (STS-1) facility). For at least the reasons stated above, the Applicants respectfully submit that the term "facilities" as used and claimed by the Applicants has been clearly defined in the Applicants' Specification.

As such, the Applicants respectfully submit that claims 1-23, as they now stand, are definite and hence fully satisfy the requirements of 35 U.S.C. § 112.

#### **B. 35 U.S.C. § 102**

The Examiner has rejected claims 1-3, 7-10, and 12-23 under 35 U.S.C. § 102(b) as being anticipated by Morley et al. (CCBR, Optimal Loading of SONET BLSRs, hereinafter "Morely"). The rejection is respectfully traversed.

The Examiner alleges that with respect to claims 1, 7, 12, 17 and 21, Morley teaches a method comprising all of the limitations of the Applicants' claims. More specifically, the Examiner alleges that Morley discloses determining a path between two nodes on a SONET ring comprising a plurality of nodes interconnected by spans where each span has a line capacity  $c$ , and if the total load on any span exceeds  $c$ , then that path and direction is not used. The Applicants respectfully disagree.

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim" (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1983)) (emphasis added).

The Applicants respectfully submit that Morley fails to teach, suggest or disclose each and every element of the claimed invention, arranged as in the claims of the Applicants. Specifically, the Applicants submit that Morley fails to teach, suggest or disclose each and every element of at least the Applicants' claim 1, which specifically recites:

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"A method, comprising the steps of:  
determining a first circuit path between a source node and a destination node in a Synchronous Optical Network (SONET) ring comprising a plurality of nodes interconnected by links, each of said links having associated with it a plurality of facilities, each of said facilities having associated with it a respective bandwidth utilization level, wherein said facilities having bandwidth utilization levels exceeding a first threshold level are not used to define said first circuit path." (emphasis added).

The Applicants' invention of at least claim 1 is directed, at least in part, to a method for SONET/SDH ring load balancing where a circuit path between a source node and a destination node is determined, where the circuit path comprises a plurality of links interconnecting nodes, each of the links having a plurality of facilities. In the invention of the Applicants, any of the facilities of the interconnecting links having a bandwidth utilization level exceeding a user determined threshold level are not used to define the circuit path between the source node and the destination node.

In contrast to the Applicants' invention, there is absolutely no teaching, suggestion or disclosure in Morley for links comprising a plurality of facilities, or that each of the facilities has a bandwidth utilization level associated with it, or for a threshold level, where the facilities having bandwidth utilization levels exceeding the threshold level are not used to define a circuit path between a source node and a destination node. More specifically, in support of at least claim 1, the Applicants in the Specification specifically recite:

"In the case of the SONET ring 140 comprising a BLSR ring, the short path between the first ADM 142 and second ADM 144 is a direct path denoted as link E, while the long path traverses ADMs 148 and 146 via links A, B and C. In this embodiment, the load or utilization level of link E is compared to a threshold load or utilization level. Alternate facilities within link E are sought if the load or threshold value exceeds the threshold or utilization level. The test for alternate facilities is repeated until a facility with a threshold or utilization level below a user set value is found. If no alternate facilities are found, the communication is routed via the long path (i.e., links A, B and C), which traverses ADM's 148 and 146, respectively. The user set threshold or utilization level is incrementally

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changed if any link on the alternate path exceeds the threshold or utilization level." (See Specification, page 7, lines 14-28).

The Applicants further recite:

"An example of threshold level adjustment (per step 304) will now be discussed. Assume that an OC-3 link is configured as three DS-3s or as a Synchronous Transport Signal Level One (STS-1) facility. That is each DS-3/STS-1 is configured for a threshold level, i.e. 50%. Specifically, each DS-3/STS-1 has a threshold of 14 DS-1s. Once the threshold is exceeded for the first DS-3/STS-1, a check is made to determine whether the other facilities within the link are below the threshold value. That is the second DS-3/STS-1 is checked to determine if its bandwidth utilization level is below 14 DS-1s. If the bandwidth of the second DS-3/STS-1 is below the threshold value, the second DS-3/STS-1 facility will be selected for the path. If the second facility is not below the threshold level, the search continues either for an alternate facility or an alternate path.

It should be noted by those skilled in the art that a facility can equate to a link where the threshold level is 100%. For example, if an OC-3 is configured as 84 DS-1s with a threshold level of a 100%, there is no facility balancing. The threshold value will determine whether a link should be equated as a facility." (See Specification, page 11, line 29 through page 12, line 14).

In the invention of the Applicants, at least with respect to claim 1, a circuit path between a source node and a destination node is determined. The links connecting the source node and the destination node are comprised of a plurality of facilities. A respective bandwidth utilization level of each of the facilities of each of the interconnecting links is determined and facilities of links having a bandwidth utilization level exceeding a predetermined user set threshold are not used to define the interconnecting circuit path.

In contrast to the invention of the Applicants, Morley merely teaches, as pointed out by the Examiner, that in a bi-directional ring having a plurality of nodes interconnected by a same number of spans, each of the spans having a line capacity of "c", if the total load on any span exceeds "c" then that path and that direction is not used. However, there is absolutely no teaching, suggestion

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or disclosure in Morley for links comprising a plurality of facilities, or that each of the facilities has a bandwidth utilization level associated with it, or for a threshold level, where the facilities having bandwidth utilization levels exceeding the threshold level are not used to define a circuit path between a source node and a destination node as taught and claimed by at least the Applicants' claim 1. That is, Morley does not teach, suggest or disclose of a user, predetermined threshold as taught and claimed by at least the Applicants' claim 1. Furthermore, Morley does not teach, suggest or disclose that each link comprises a plurality of facilities that may be used to complete an interconnection. More specifically, in the invention of the Applicants, a link comprises a plurality of facilities and any of the facilities of the links having a bandwidth utilization level below a threshold may be used to complete an interconnection. In contrast, in Morley, if the single span interconnecting two nodes does not have a capacity capable of accommodating a requested load, then an opposite direction ring must be used. For at least the reasons stated above, the Applicants respectfully submit that Morley absolutely fails to teach, suggest or disclose each and every element of at least the Applicants' claim 1 and as such does not anticipate at least the Applicants' claim 1.

Therefore, the Applicants submit that independent claim 1 is not anticipated by the teachings of Morley and, as such, fully satisfies the requirements of 35 U.S.C. § 102 and is patentable thereunder.

Likewise, independent claims 7, 12, 17, and 21 recite similar relevant features as recited in claim 1. As such, the Applicants submit that independent claims 7, 12, 17, and 21 are also not anticipated by the teachings of Morley and also fully satisfy the requirements of 35 U.S.C. § 102 and are patentable thereunder.

Furthermore, dependent claims 2-3, 8-10, 13-16, 18-20, and 22-23 depend either directly or indirectly from independent claims 1, 7, 12, 17, and 21 and recite additional features therefor. As such and for at least the reasons set forth herein, the Applicants submit that dependent claims 2-3, 8-10, 12-16, 18-20,

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and 22-23 are also not anticipated by the teachings of Morley. Therefore the Applicants submit that dependent claims 2-3, 8-10, 12-16, 18-20, and 22-23 also fully satisfy the requirements of 35 U.S.C. § 102 and are patentable thereunder.

The Applicants reserve the right to argue the patentability of each of the claims independently in a subsequent prosecution.

**C. 35 U.S.C. § 103(a)**

The Examiner has rejected claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Morley in view of Wan et al. (IEEE, Load Balancing in Counter Rotated Sonet Rings, herein "Wan"). The rejection is respectfully traversed.

Claims 4 and 5 are dependent claims that depend indirectly from the Applicants' claim 1 and directly from the Applicants' claim 2. The Examiner applied Morley to claims 4 and 5 as described above for the Examiner's rejection of the Applicants' claims 1 and 2. The Examiner correctly concedes, however, that regarding claim 4, Morley does not disclose, wherein said first circuit path is a short path, and that regarding claim 5 Morley fails to teach that a second circuit path is a long path. As such, the Examiner cites Wan for teaching short path and long path routing between a source and destination node to achieve optimal load balancing transmissions. The Examiner further alleges that it would have been obvious to modify Morley by specifying that the first path is a short path and that the second path is a long path as per Wan. The Applicants respectfully disagree.

As described above with regard to the Examiner's rejection of claim 1 and claim 2, the teachings of Morley do not teach suggest, or describe the Applicants invention with regard to claim 1 or claim 2. As such, and at least for the reasons set forth above indicating that Morley does not teach suggest, or describe the Applicants' invention with regard to claim 1 and claim 2, the Applicants respectfully submit that dependent claims 4 and 5, which depend indirectly from

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independent claim 1 and directly from claim 2, are also not rendered obvious by Morley.

Even further, the Applicants submit that the teachings of Wan alone also do not teach the invention of the Applicants at least with regard to claims 1, 2, 4 and 5. Wan teaches several variants of load balancing in counter-rotated directed SONET rings. Specifically, Wan teaches that optimal fractional routing can be obtained by solving a linear program; semi-integral routing can be obtained by solving at most three linear programs; optimal integral routing can be obtained by rounding any optimal parallel semi-integral routing and that optimal unsplit routing is NP-complete. (See Wan, Conclusion)

However, in contrast to the invention of the Applicants, at least with respect to claims 1, 2, 4 and 5, there is absolutely no teaching, suggestion or disclosure in Wan for links comprising a plurality of facilities, or that each of the facilities has a bandwidth utilization level associated with it, or for a threshold level, where the facilities having bandwidth utilization levels exceeding the threshold level are not used to define a circuit path between a source node and a destination node as taught and claimed by at least the Applicants' claim 1. As such, and at least because Wan does not teach, suggest or disclose the Applicants' claim 1, the Applicants further submit that Wan does not teach, suggest or disclose the Applicants' claims 2, 4 and 5, which depend directly and indirectly, respectively, from the Applicants' claim 1.

Furthermore, the Applicants submit that there is no suggestion or motivation to combine the teachings of Morley and Wan.

For prior art reference to be combined to render obvious a subsequent invention under 35 U.S.C. § 103, there must be something in the prior art as a whole which suggests the desirability, and thus the obviousness, of making the combination. Uniroyal v. Rudkin-Wiley, 5 U.S.P.S.Q.2d 1434, 1438 (Fed. Cir. 1988). The teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so. In re Fine, 5 U.S.P.S.Q.2d 1596, 1599 (Fed. Cir. 1988). Hindsight is strictly forbidden. It is impermissible to use

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the claims as a framework to pick and choose among individual references to recreate the claimed invention Id. at 1600; W.L. Gore Associates, Inc., v. Garlock, Inc., 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983).

Moreover, the mere fact that a prior art structure could be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992); In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984);

Moreover, the Applicants submit that even if there was a motivation or suggestion to combine the references (which the Applicants believe that there is none), the teachings of Morley and Wan, either alone or in any allowable combination, fail to teach the invention of the Applicants at least with respect to claim 1. Even further, the Applicants submit that the teachings of Wan fail to bridge the substantial gap between the Applicants' invention, and the teachings of Morley. More specifically, and as discussed and proven above, Morley fails to teach links comprising a plurality of facilities, or that each of the facilities has a bandwidth utilization level associated with it, or a threshold level, where the facilities having bandwidth utilization levels exceeding the threshold level are not used to define a circuit path between a source node and a destination node as taught and claimed in at least the Applicants' claim 1. Furthermore, the Applicants submit that the load balancing variant taught in Wan do not bridge the gap between the teachings of Morley and the Applicants' invention at least with respect to the Applicants' claim 1. As such and at least because the teachings of Morley and Wan, alone or in any allowable combination, fail to teach, suggest or disclose the Applicants' claim 1, the Applicants further submit that the teachings of Morley and Wan, alone or in any allowable combination, fail to teach, suggest or disclose the Applicants' invention with respect to claims 4 and 5, which depend indirectly from the Applicants' claim 1. As such, the Applicants respectfully submit that claims 4 and 5 are not rendered obvious by the teachings

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of Morley and Wan, alone or in any allowable combination, for at least the reasons described above.

Furthermore, the Applicants would like to point out to the Examiner that the exact publication date of Wan is not properly cited and as such Wan may not be a proper reference to cite as prior art against the Applicants' invention. The Applicants respectfully request that the Examiner cite the exact publication date of the Wan reference.

Therefore, the Applicants respectfully submit that claims 4 and 5, as they now stand, fully satisfy the requirements of 35 U.S.C. § 103 and are patentable thereunder.

The Applicant reserves the right to establish the patentability of each of the claims individually in subsequent prosecution.

#### **D. 35 U.S.C. § 103(a)**

The Examiner has rejected claims 6 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Morley in view of Budka (U.S. Patent No. 6,014,657). The rejection is respectfully traversed.

Claim 6 is a dependent claim that depends indirectly from the Applicants' claim 1 and directly from the Applicants' claim 3. Claim 11 is a dependent claim that depends indirectly from the Applicants' claim 7 and directly from the Applicants' claim 10. The Examiner applied Morley to claims 6 and 11 as described above for the Examiner's rejection of the Applicants' claims 1 and 3 and 7 and 10. The Examiner correctly concedes, however, that regarding claims 6 and 11, Morley does not disclose that personnel are notified of a lack of facilities. As such, the Examiner cites Budka for teaching generating an alert that will show that a line is congested and cannot support anymore load. The Examiner further alleges that it would have been obvious to modify Morley by

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generating an alert that will show that a line is congested and cannot support anymore load as per Budka. The Applicants respectfully disagree.

As described above with regard to the Examiner's rejection of claims 1 and 3, and claims 7 and 10, the teachings of Morley do not teach suggest, or describe the Applicants invention with regard to at least claims 1 and 3, and claims 7 and 10. As such, and at least for the reasons set forth above indicating that Morley does not teach suggest, or describe the Applicants' invention with regard to claims 1 and 3, and claims 7 and 10, the Applicants respectfully submit that dependent claims 6 and 11, which depend indirectly from independent claim 1 and directly from claim 2, are also not taught or rendered obvious by Morley.

Even further, the Applicants submit that the teachings of Budka alone also do not teach the invention of the Applicants at least with regard to claims 1, 3, 6, 7, 10 and 11. Budka teaches a technique for balancing a communication load in a communication network where a communication load imbalance is detected, the overburdened channels in the network are labeled congested to deter new-coming terminals from accessing such channels. In addition, messages are sent to selected terminals on the congested channels, commanding them to relocate from such channels to other uncongested channels. (See Budka, Abstract).

However, in contrast to the invention of the Applicants, at least with respect to claims 1, 3, 6, 7, 10 and 11, there is absolutely no teaching, suggestion or disclosure in Budka for links comprising a plurality of facilities, or that each of the facilities has a bandwidth utilization level associated with it, or for a threshold level, where the facilities having bandwidth utilization levels exceeding the threshold level are not used to define a circuit path between a source node and a destination node as taught and claimed by at least the Applicants' claims 1 and 7. As such, and at least because Budka does not teach, suggest or disclose the Applicants' claims 1 and 7, the Applicants further submit that Budka also does not teach, suggest or disclose the Applicants' claims 3, 6,

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10 and 11 which depend directly and indirectly, respectively, from the Applicants' claims 1 and 7.

Furthermore, the Applicants submit that there is no suggestion or motivation to combine the teachings of Morley and Budka.

For prior art reference to be combined to render obvious a subsequent invention under 35 U.S.C. § 103, there must be something in the prior art as a whole which suggests the desirability, and thus the obviousness, of making the combination. Uniroyal v. Rudkin-Wiley, 5 U.S.P.SQ.2d 1434, 1438 (Fed. Cir. 1988). The teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so. In re Fine, 5 U.S.P.SQ.2d 1596, 1599 (Fed. Cir. 1988). Hindsight is strictly forbidden. It is impermissible to use the claims as a framework to pick and choose among individual references to recreate the claimed invention Id. at 1600; W.L. Gore Associates, Inc., v. Garlock, Inc., 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983).

Moreover, the mere fact that a prior art structure could be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992); In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984);

Moreover, the Applicants submit that even if there was a motivation or suggestion to combine the references (which the Applicants believe that there is none), the teachings of Morley and Budka, either alone or in any allowable combination, fail to teach the invention of the Applicants at least with respect to claims 1 and 7. Even further, the Applicants submit that the teachings of Budka fail to bridge the substantial gap between the Applicants' invention, and the teachings of Morley. More specifically, and as discussed and proven above, Morley fails to teach links comprising a plurality of facilities, or that each of the facilities has a bandwidth utilization level associated with it, or a threshold level, where the facilities having bandwidth utilization levels exceeding the threshold

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level are not used to define a circuit path between a source node and a destination node as taught and claimed in at least the Applicants' claims 1 and 7. Furthermore, the Applicants submit that the load balancing taught in Budka does not bridge the gap between the teachings of Morley and the Applicants' invention at least with respect to the Applicants' claims 1 and 7. As such and at least because the teachings of Morley and Budka, alone or in any allowable combination, fail to teach, suggest or disclose the Applicants' claims 1 and 7, the Applicants further submit that the teachings of Morley and Budka, alone or in any allowable combination, also fail to teach, suggest or disclose the Applicants' invention with respect to claims 6 and 11, which depend indirectly from the Applicants' claims 1 and 7. As such, the Applicants respectfully submit that claims 6 and 11 are not rendered obvious by the teachings of Morley and Budka, alone or in any allowable combination, for at least the reasons described above.

Therefore, the Applicants respectfully submit that claims 6 and 11, as they now stand, fully satisfy the requirements of 35 U.S.C. § 103 and are patentable thereunder.

The Applicant reserves the right to establish the patentability of each of the claims individually in subsequent prosecution.

#### Conclusion

Thus the Applicants submit that none of the claims, presently in the application are anticipated under the provisions of 35 U.S.C. § 102 or obvious under the provisions of 35 U.S.C. § 103. Furthermore, the Applicants also submit that all of these claims now fully satisfy the requirements of 35 U.S.C. § 112. Consequently, the Applicants believe that all of these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application,

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it is requested that the Examiner telephone Jorge Tony Villabon, Esq. at (732) 530-9404 x1131 or Eamon J. Wall, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,



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Dated: 2/3/04

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